Supreme Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF MARYLAND,
Petitioner,

v.

LABARON STANBERRY,
Respondent.

On Petition For Writ of Certiorari
To The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

As part of a routine drug interdiction investigation, plain clothes police officers boarded a Greyhound bus at an interstate rest stop. After being told by the driver, who had mistakenly miscounted, that all of the passengers had reboarded the bus, the officers asked the passengers to identify their baggage. One suit bag was not claimed and, after asking all of the passengers then present if anyone owned the bag and receiving no response, the officers opened the bag and found cocaine and heroin. A few minutes later, a late returning passenger, Respondent Stanberry, attempted to reboard and told one of the officers that the bag was his. The state court reversed the controlled dangerous substance convictions, ruling that the search violated the Fourth Amendment and that the good faith exception to the exclusionary rule did not apply.

The questions presented are:

1. Whether the search of Stanberry's suit bag was reasonable under the Fourth Amendment because the officers relied on objective facts indicating that the baggage was abandoned.

2. Whether the admission of the drugs found in the bag, even if seized in violation of the Fourth Amendment, was proper because the officers acted in good faith in searching the bag.

PARTIES TO THE PROCEEDING

The caption contains the names of all parties below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Maryland, respectfully requests that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland in this case.

OPINIONS BELOW

The reported opinion of the Court of Appeals of Maryland, *Stanberry v. State*, 343 Md. 720, 684 A.2d 823 (1996), reversing the judgment of the Court of Special Appeals of Maryland, is reproduced in Appendix A. (App. 1a-25a).

The reported opinion of the Court of Special Appeals of Maryland, *Stanberry v. State*, 105 Md. App. 200, 659 A.2d 333 (1995), affirming the judgment of the Circuit Court for Harford County, Maryland, is reproduced in Appendix B. (App. 26a-42a).

The unreported March 24, 1994 ruling of the Circuit Court for Harford County, Maryland, denying Stanberry's motion to suppress, is reproduced in Appendix C. (App. 43a-46a).

STATEMENT OF JURISDICTION

The opinion of the Court of Appeals of Maryland reversing the judgment of the Court of Special Appeals of Maryland was filed on November 12, 1996. This petition is filed within ninety days of that judgment, as required by Rule 13 of the Rules of the Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against

> unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On August 16, 1993, three members of the Maryland State Police, as part of a practice of routine drug interdiction, were monitoring Greyhound buses that stopped at the Maryland House rest stop on Interstate I-95. (App. 2a). Respondent Stanberry was a passenger on one such bus, which pulled into the rest stop at approximately 8:55 p.m. for a twenty-minute stop while en route south from Newark, New Jersey.

After the passengers left the bus, the police officers approached the driver and arranged to board the bus for the interdiction procedure once all of the passengers had returned. (*Id.*). At 9:20 p.m., the bus driver counted the passengers and reported that all were aboard. (*Id.*). In fact, the driver had miscounted; one passenger, Stanberry, had not yet returned. (*Id.*).

Two of the officers boarded the bus, while the third remained outside. Neither of the officers on the bus was in uniform or displayed a weapon. (*Id.*). They identified themselves to the passengers and explained that they were performing an interdiction procedure, the purpose of which was to prevent the flow of drugs into Maryland. (*Id.*).

The officers went to opposite ends of the bus and began asking passengers to identify their baggage. (*Id.*). One officer found a black suit bag in the overhead rack that was not identified by any of the passengers seated nearby. (*Id.*). The officer continued questioning the passengers about other bags in his section of the bus, then returned to

the unclaimed suit bag. (*Id.*). Again the officer inquired of the nearby passengers if the bag belonged to them; again, no one claimed the bag. (App. 3a). Finally, the officer took the suit bag to the front of the bus, held the bag overhead, and asked all of the passengers if anyone owned the bag. (*Id.*). No one claimed ownership of the bag. (*Id.*).

The officer then removed the suit bag from the bus, opened it, and found a white shopping bag with four smaller bags inside. (*Id.*). One of the bags contained cocaine; the other three bags each contained about 100 baggies of heroin. (*Id.*). The police closed the suit bag and left it at the door of the bus. (*Id.*).

At this time, Stanberry returned to the bus. (*Id.*). The bus driver at first tried to stop Stanberry from boarding, but then realized that Stanberry was, in fact, a passenger. (*Id.*). Before Stanberry reboarded, the officer stationed outside the bus asked Stanberry if the suit bag belonged to him. (*Id.*). Stanberry initially responded that the bag was his, but immediately thereafter disclaimed ownership. (*Id.*). Stanberry ultimately acknowledged that he was transporting drugs to Richmond, Virginia in return for $300. (*Id.*). The police arrested Stanberry. (*Id.*).

Stanberry was indicted on charges of bringing a controlled dangerous substance into Maryland and related offenses. (*Id.*). He filed a motion to suppress both the drugs found in the suit bag and his statement, arguing that the police had searched his luggage in violation of the Fourth Amendment and that his statement was suppressible as the fruit of the illegal search. (App. 3a-4a).

At the hearing on the motion, Stanberry testified that he had not abandoned the bag when he went into the Maryland House and that he had intended to, and did, return to the bus to continue his trip. (App. 4a). The State argued that the search of the bag was authorized by the

Fourth Amendment because the officers reasonably believed the suit bag had been abandoned, and because their conduct was reasonable under the totality of the circumstances. (*Id.*).

The suppression court denied the motion. (*Id.*). The court found as a fact that Stanberry had not abandoned his bag, but concluded that, under the circumstances, the officers reasonably believed that he had and, thus, did not violate the Fourth Amendment when they searched the bag. (App. 4a-5a).

Following his conviction of transporting a controlled dangerous substance, Stanberry appealed to the Court of Special Appeals of Maryland, challenging the denial of his motion to suppress. (*Id.*). The state intermediate appellate court affirmed on the ground that the officers reasonably believed Stanberry's suit bag had been abandoned when they searched it, and the search was therefore lawful Fourth Amendment conduct. (App. 5a-6a).

The Court of Appeals of Maryland reversed. That court rejected the State's argument, which rested on the "apparent consent" concept recognized by this Court in *Illinois v. Rodriguez*, 497 U.S. 177 (1990), that if police reasonably believe luggage is abandoned, then their search of it comports with the Fourth Amendment's reasonableness requirement. The Maryland court instead analyzed the issue by resort to this Court's decision of *Florida v. Bostick*, 501 U.S. 429 (1991). The court determined that the reasoning underlying *Bostick* "precludes the courts, or the police, from inferring abandonment from the owner's failure to assert ownership of luggage in response to police questioning during a drug interdiction." (App. 15a-16a). The court concluded that, "when police are conducting a drug interdiction, when the interdiction protocol is the sole basis for the citizen inquiry and reasonable suspicion or probable cause is otherwise lacking, police may not infer abandonment from

the owner's passive failure to claim property." (App. 17a-18a). The court held, therefore, that the troopers in this case could not reasonably have believed that Stanberry's bag was abandoned. (App. 18a-19a, 21a-22a). The court rejected the State's alternative basis for affirming the suppression court's ruling, i.e., that the police had acted in good faith and, as such, the exclusionary rule ought not apply to the fruits of their good faith-based conduct. As the Court of Appeals viewed it, "the police were clearly aware of the passengers' right to remain silent or to leave the bus during the interdiction," and, thus, could not have acted in good faith. (App. 22a).

REASONS FOR GRANTING THE WRIT

The Court of Appeals of Maryland ruled in this case that no police officer can *ever* reasonably infer that property has been abandoned by its owner from the failure of persons in proximity to the property to claim ownership of it. Assuming that the officers in this case had questioned all of the bus passengers about ownership of the unclaimed suit bag and had received no response, the court concluded that it was unreasonable for the police to have inferred abandonment of the bag from silence. The court also concluded that a police officer who acts on the basis of such an inference may never be deemed to have acted in good faith. Neither conclusion is correct under decisions of this Court in analogous cases. Moreover, given the conflict that prevails among the lower state and federal courts with respect to both aspects of the lower court's decision in this case, and given as well the frequency with which drug interdictions occur, this case is an appropriate vehicle for this Court to decide both of these important questions.

I.

THE DECISION BELOW IS INCONSISTENT WITH THIS COURT'S PRECEDENT.

In at least four respects, the decision of the Court of Appeals of Maryland in this case is fundamentally at odds with this Court's Fourth Amendment jurisprudence.

First, the state court ignored a basic Fourth Amendment tenet, recently reiterated in the Court's decisions in *Ohio v. Robinette*, 117 S. Ct. 417 (1996), and *Whren v. United States*, 116 S. Ct. 1769 (1996), that the reasonableness of police conduct is measured by an objective standard and the subjective intentions of the parties play no role in the analysis. Notwithstanding this settled law, the Court of Appeals assumed that Respondent Stanberry's subjective intention to retain a possessory interest in his luggage, unknown to the troopers at the time of the search, was relevant to whether the police acted reasonably in assuming from the facts and circumstances that *were* known to them that the container had been abandoned.

Second, and contrary to *Robinette* in yet another respect, the lower court fashioned a categorical rule, apparently subject to no exceptions, that police may never rely on the failure of persons to claim ownership of a nearby container as evidence that the container has been abandoned. This per se rule runs afoul of this Court's admonition in *Robinette* that the reasonableness inquiry is fact-specific, and that a "'litmus-paper test or single sentence or . . . paragraph . . . rule fails to account for the endless variations in the facts and circumstances implicating the Fourth Amendment.'" *Id.* at 421 (quoting

Florida v. Royer, 460 U.S. 490, 506 (1983)).[1]

Third, the Court of Appeals failed to recognize that "the potential intrusiveness of the officers' conduct must be judged from the viewpoint of an innocent person in [the] position" of the passengers who are subject to the officers' inquiry. *Florida v. Bostick*, 501 U.S. at 438. Rather than read *Bostick* as suggesting that the police are entitled to assume that, when every passenger on a bus fails to claim ownership of a suit bag, the bag is abandoned, the state court reads *Bostick* as suggesting the contrary: "[W]e believe that [*Bostick*] precludes the courts, or the police, from inferring abandonment from the owner's failure to assert ownership of luggage in response to police questioning during a drug interdiction." (App. 15a-16a). As evidenced by this statement, the Court of Appeals is of the view that police must always assume that they are dealing with guilty, not innocent, individuals and evaluate their conduct in light of that assumption. This cannot be the law.[2]

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[1] In *Ohio v. Robinette*, 117 S. Ct. 417, 421 (1996), this Court reversed the Ohio Supreme Court's bright-line rule that a lawfully seized individual must be advised that he is "free to go" before his consent to search will be deemed voluntary. Previously, in *Florida v. Bostick*, 501 U.S. 429, 439 (1991), the Court reversed the Florida Supreme Court's per se rule that questioning aboard a bus always constitutes a seizure. The Maryland court's bright line rule in this case suffers from the same flaws as did the per se rules at issue in *Robinette* and *Bostick*.

[2] Wrongly interpreting the facts here as evidencing refusal on the part of the passengers to cooperate, the court, citing *Bostick*, 501 U.S. at 437, concluded: "To construe a refusal to cooperate with the police conducting a drug interdiction as an indication that property is abandoned, thereby

Fourth, the lower court's opinion in this case fails to take into account the reasonableness analysis this Court employed in *Hill v. California*, 401 U.S. 797 (1971), *Maryland v. Garrison*, 480 U.S. 79 (1987), and, most apposite to the present case, *Illinois v. Rodriguez*, 497 U.S. 177 (1990). These cases recognize that the police may be factually wrong in their assessment of a situation, yet reasonable in acting upon that mistaken notion. Indeed, as this Court declared in *Rodriguez*, 497 U.S. at 185:

> It is apparent that in order to satisfy the "reasonableness" requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government--whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement--is not that they always be correct, but that they always be reasonable.

Rodriguez dictates the analysis that should apply to the abandonment issue presented by this case. The question is not whether Stanberry abandoned his suit bag, but whether the state troopers reasonably believed that he did.

In short, the court below fundamentally misapplied *Bostick* and *Rodriguez*. It compounded its errors by failing to recognize that under *Robinette* and *Whren* the subjective intentions of Stanberry and the officers were irrelevant. This Court should grant review to correct these misapplications of its precedent and to apply *Rodriguez* in

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justifying a warrantless search or seizure, would contradict the holding of *Bostick*." (App. 16a).

the context of apparent abandonment.[3]

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[3] Although this Court has yet to rule on the issue, numerous lower courts have relied on *Rodriguez* to hold that, so long as the police are reasonable in their mistaken belief that property is abandoned, they act reasonably in searching it. *E.g.*, *United States v. Barlow*, 17 F.3d 85, 89 (5th Cir.), *cert. denied*, 115 S. Ct. 148 (1994) (not referring to *Rodriguez*, but looking to officer's reasonable belief as controlling the analysis: "[A] police officer who discovers an unlocked car left at the end of a public street with the key in the ignition could reasonable [sic] conclude that the car had been abandoned"); *United States v. Rem*, 984 F.2d 806, 810-11 (7th Cir.), *cert. denied*, 114 S. Ct. 300 (1993) (noting that because a defendant's "subjective 'intent' could be any hindsight excuse that fits the situation," the court "must instead examine the objective facts as the various agents encountered them," and finding defendant abandoned his luggage when he jumped from train leaving luggage aboard); *United States v. McDonald*, 855 F. Supp. 267, 269-70 (S.D. Ind. 1994) (stating that the focus of the abandonment inquiry "must be on what was objectively made known to the police during the time period directly preceding the search," and finding actual, as opposed to apparent, abandonment); *State v. Browning*, 433 S.E.2d 119, 120 (Ga. App. 1993) (framing abandonment issue as "whether under the totality of the circumstances, the investigating officer reasonably believed at the time of the search that the accused had relinquished his interest in the property to such an extent that he no longer had a reasonable expectation of privacy in it," and finding defendant had not abandoned her purse); *People v. Smith*, 561 N.E.2d 252, 260 (Ill. App. 1990) (believing the reasonableness rationale of *Rodriguez* "to be fully applicable to a determination of whether a defendant has abandoned premises from which evidence is taken," and stating: "We see no principled distinction between a *reasonable but erroneous* belief by the police that a third party had 'common authority' with the defendant over the premises in question, and a *reasonable but erroneous* belief by the police that a defendant had abandoned

II.

THE DECISION BELOW CONFLICTS WITH OTHER LOWER COURT DECISIONS ASSESSING THE EFFECT OF THE DEFENDANT'S DISCLAIMER OF OWNERSHIP OF THE PROPERTY ON THE QUESTION WHETHER, FOR THE FOURTH AMENDMENT, THE DEFENDANT ABANDONED THE PROPERTY.

Proceeding from the premise that the reasonableness of the officers' conduct in this case turned on the threshold question whether the police may infer abandonment of luggage from the property owner's silence in the face of police inquiry about ownership, the Court of Appeals of Maryland concluded that the police are never entitled to rely on such silence as an indicator of abandonment. The court was wrong, however, in viewing this case differently from any other case in which the police are confronted with a disclaimer of ownership on the part of the person the police have reason to believe may possess the property. In this case, for all the officers knew, that person was on the bus at the time of the interdiction procedure and, by express disclaimer or silence,[4]

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the premises in question"); *State v. Roberts*, 631 A.2d 835, 839 (Vt. 1993) (concluding, on the basis of *Rodriguez*, that the officers' reasonable belief that the premises had been abandoned made their entry lawful even had the premises not in fact been abandoned).

[4] The seizing officer's testimony on this point was, "Nobody claimed [the suit bag] as being theirs, after several announcements." (App. 19a-20a). Although the officer was not

manifested a lack of ownership.

The courts are in conflict over whether disclaimer of ownership, be it affirmative statement, silence, or other action, permits the police to infer abandonment. Most courts hold that a disclaimer of ownership in luggage permits the officers to infer abandonment. *E.g.*, *United States v. McDonald*, 100 F.3d 1320, 1329 (7th Cir. 1996) (defendant's affirmative disclaimer coupled with subsequent failure to claim ownership of bag constituted abandonment); *United States v. Hernandez*, 7 F.3d 944, 947 (10th Cir. 1993) (defendant abandoned luggage on overhead rack by sitting some distance away from it and repeatedly failing to acknowledge ownership); *United States v. Thompkins*, 998 F.2d 629, 632 (8th Cir. 1993) (defendant's disclaimer of ownership constituted abandonment); *United States v. Rem*, 984 F.2d 806, 810-12 (7th Cir. 1993) (passenger who left luggage on overhead rack, then suddenly deboarded train, abandoned bag); *United States v. Gonzales*, 979 F.2d 711, 714 (9th Cir. 1992) (bus passenger's denying that luggage next to him was his and saying he had no objection to police opening it constituted abandonment); *United States v. Jones*, 973 F.2d 928, 931 (D.C. Cir.), *vacated in part on rehearing*, 980 F.2d 746 (1992) (passenger's flight from bus and subsequent disclaimer of ownership of bag constituted abandonment); *United States v. Springer*, 946 F.2d 1012, 1017 (2d Cir. 1991) (affirmative disclaimer of ownership of bag constituted abandonment); *United States v. Ruiz*, 935 F.2d 982, 983-84 (8th Cir. 1991) (defendant's words and actions indicated abandonment); *State v.*

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asked to elaborate, it may fairly be assumed that he was not met in his several inquiries with silence, but instead, with a combination of affirmative disclaimers, nonverbal actions reflecting non-ownership, and silence, any one of which is tantamount to a denial of ownership.

Daniels, 576 So. 2d 819, 823-24 (Fla. App. 1991) (affirmative denial of ownership constituted abandonment); *People v. Wilcher*, 495 N.E.2d 1001, 1003 (Ill. App. 1986), *cert. denied*, 480 U.S. 948 (1987) (same); *People v. Hollman*, 562 N.Y.S.2d 494, 496 (App. Div.), *appeal denied*, 565 N.Y.S.2d 771 (N.Y. 1990) (same); *State v. Johnson*, 390 S.E.2d 707, 710-11 (N.C. App. 1990) (same).

In contrast to these cases, other courts, like the Maryland court in this case, decline to view the objective facts and circumstances indicating to the police that luggage has been abandoned by virtue of no person's claim of ownership in the bag. These courts believe it improper to draw such an inference, apparently by reference, albeit unspoken, to the notion that a person may not be compelled to incriminate himself. *See United States v. Sanders*, 719 F.2d 882, 886 (6th Cir. 1983); *State v. Joyner*, 669 P.2d 152, 153 (Haw. 1983); *State v. May*, 608 A.2d 772, 776 (Me. 1992); *Commonwealth v. Small*, 552 N.E.2d 599, 600-01 (Mass. App. 1990); *Commonwealth v. Holloway*, 384 S.E.2d 99, 104 (Va. App. 1989). Not only does this view lack support in this Court's Fourth Amendment jurisprudence, it runs directly contrary to the Court's statement in *Bostick* that the effect of police activity on persons they encounter is to be assessed from the perspective of the innocent citizen. 501 U.S. at 438.

The courts are thus in conflict not only on the question whether police act in accord with the Fourth Amendment when searching property based on a reasonable, but mistaken, belief that the property has been abandoned, but on the antecedent question whether the police may reasonably rely on silence as an indicator of abandonment. With this case, the Court can resolve the conflict and clarify proper procedure in this frequently occurring police practice.

III.

THE LOWER COURTS ARE DIVIDED ON THE ISSUE WHETHER THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE APPLIES TO WARRANTLESS POLICE ACTIVITY.

Thirteen years ago, this Court ruled that notwithstanding a Fourth Amendment violation, the exclusionary rule need not be applied when police officers act in an objectively reasonable manner, but rely on a warrant that is later determined to be invalid. *See United States v. Leon*, 468 U.S. 897 (1984). This is so because the exclusionary rule is "'a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.'" *Id.* at 906 (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)). Thus,

> [w]here the officer's conduct is objectively reasonable . . . "excluding the evidence will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that . . . the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty."

Illinois v. Krull, 480 U.S. 340, 349 (1987) (quoting *Leon*, 468 U.S. at 920).

Since *Leon*, the Court has twice applied the good faith doctrine to warrantless police activity. In *Krull*, the Court had no difficulty applying the doctrine to evidence seized by police during a warrantless administrative search authorized by a statute that was later declared to be

unconstitutional and upon which the police reasonably relied in executing the search. Just two years ago, the Court applied the *Leon* rationale in holding that a police officer's objectively reasonable reliance on incorrect computer data did not require application of the exclusionary rule to the evidentiary fruits of such reliance. *Arizona v. Evans*, 115 S. Ct. 1185, 1194 (1995).

Even though this Court has applied *Leon* to instances where the police have relied on legislative and clerical action, the lower courts continue to be divided on the question whether the good faith doctrine should apply when police have acted without a warrant. Some federal and state courts have applied the doctrine in the context of warrantless searches.

The leading case on this side of the issue is *United States v. De Leon-Reyna*, 930 F.2d 396 (5th Cir. 1991) (en banc). In that case, an officer noticed a welding truck which lacked welding equipment and, among other suspicious facts, contained a stack of plywood often used for false compartments to smuggle drugs and persons who are not United States citizens. *Id.* at 398. The officer called in the truck's license plate number to check whether the vehicle was stolen. *Id.* Misunderstanding the number, the dispatcher radioed back that the plates had been issued for a Ford dump truck and not the Chevrolet welding truck. *Id.* After being stopped, the defendant consented to an inspection of the truck, which led to the discovery of over a half-ton of cocaine. *Id.* The Fifth Circuit concluded that because it was objectively reasonable for the officer to think that under all of the circumstances the vehicle was engaged in criminal activity, the good faith exception applied to allow into evidence the fruits of the warrantless search. *Id.* at 401-02.

At least three state courts have applied the good faith exception to warrantless searches. *See People v. Downing*, 40 Cal. Rptr. 2d 176, 183 (Cal. 1995), *cert.*

denied, 116 S. Ct. 929 (1996) (good faith rationale "applies to cases such as this where a recognized exception to a warrant is the basis for the search and seizure of the evidence sought to be suppressed"); *Emerson v. State*, 648 N.E.2d 705, 708 (Ind. App. 1995) (good faith exception applies to warrantless search if police reasonably believed they had authority to search premises); *State v. Pearson*, 366 S.E.2d 895, 900 (N.C. App.), *cert. denied*, 374 S.E.2d 597 (N.C. 1988) (upholding warrantless search of blood sample where officer relied in good faith on court's issuance of nontestimonial identification order).

Four federal circuits, however, have declined to extend *Leon* to searches conducted without benefit of a warrant. *See United States v. Scales*, 903 F.2d 765, 768 (10th Cir. 1990); *United States v. Curzi*, 867 F.2d 36, 44 (1st Cir. 1989); *United States v. Winsor*, 846 F.2d 1569, 1579 (9th Cir. 1988); *United States v. Morgan*, 743 F.2d 1158, 1165 (6th Cir. 1984), *cert. denied*, 471 U.S. 1061 (1985). Likewise, in addition to Maryland, some state courts have expressed the view that the good faith doctrine does not generally apply to warrantless police activity. *See, e.g., Morse v. State*, 604 So. 2d 496, 502 (Fla. App. 1992); *State v. Prestwich*, 733 P.2d 811, 814 (Idaho App. 1987); *Commonwealth v. Elliott*, 714 S.W.2d 494, 497 (Ky. App. 1986); *Tomlin v. State*, 869 P.2d 334, 340 (Okla. Crim. App. 1994).

With this case, the Court can resolve the conflict among the lower courts created by *Leon*, *Krull*, and *Evans*. The policy underpinnings of the exclusionary rule dictate the result advocated by the State, because the rule's application is unwarranted where, as here, it does not result in appreciable deterrence. *See Evans*, 115 S. Ct. at 1191. The officer who searched Stanberry's bag reasonably believed it had been abandoned; thus, application of the exclusionary rule in this case would not

further its purpose of deterring police misconduct. Just as this Court has refused to subject a police officer to civil rights liability for a violation of the Fourth Amendment unless it was apparent by reference to clearly established law, *see Anderson v. Creighton*, 483 U.S. 635, 640 (1987), evidence obtained in violation of the Fourth Amendment should not be excluded from the criminal defendant's trial unless the violation was apparent and no reasonable officer would have believed the conduct to be lawful.

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of Maryland.

Respectfully submitted,

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